

No. 83-786

IN THE

Supreme Court of the United States

October Term, 1983

IN THE MATTER OF THE APPLICATION OF RICHARD S. SMALL
TO THE STATE BAR OF NEVADA.

ON APPEAL FROM THE SUPREME COURT OF
THE STATE OF NEVADA.

APPELLEE'S MOTION TO DISMISS.

LIONEL SAWYER & COLLINS,
ROBERT M. BUCKALEW,
1700 Valley Bank Plaza,
300 South Fourth Street,
Las Vegas, Nevada 89101,
(702) 383-8888.

*Attorney of Record for Appellee,
Nevada State Board of
Bar Examiners*

RODNEY M. JEAN,
EVAN J. WALLACH.

Questions Presented.

Whether the Board of Examiners of the Nevada Bar is a proper party in this matter?

Whether Appellant has presented a substantial question to this Court?

TABLE OF CONTENTS

	Page
Questions Presented	i
Constitutional Provision Involved	1
Statement	1
Argument	3
Conclusion	4

TABLE OF AUTHORITIES CITED

Cases

Clark v. Washington, 366 F.2d 678 (9th Cir. 1966)	3
County of Lincoln v. Luning, 133 U.S. 529 (1890)	3
District of Columbia Court of Appeals v. Feldman, — U.S. —, 75 L.Ed.2d 206 (1983)	2
Louis v. Supreme Court of Nevada, 490 F.Supp. 1174 (D. Nev. 1980)	3, 4
Nort, In re, 96 Nev. 85, 605 P.2d 627 (1980)	3, 4

Constitution

United States Constitution, Eleventh Amendment	1, 3
---	------

Rules

Nevada Supreme Court Rules, Rule 39	2, 3
Nevada Supreme Court Rules, Rule 49	2
Nevada Supreme Court Rules, Rule 51(3)	1, 2
Nevada Supreme Court Rules, Rule 76	3

Statute

United States Code, Title 28, Sec. 2103	2
---	---

No. 83-786
IN THE
Supreme Court of the United States

October Term, 1983

IN THE MATTER OF THE APPLICATION OF RICHARD S. SMALL
TO THE STATE BAR OF NEVADA.

APPELLEE'S MOTION TO DISMISS.

Constitutional Provision Involved.

U.S. Const. Amend. XI.

Statement.

Appellant is a graduate of Western State College of Law, a school which has not been accredited by the committee on legal education and admissions to the bar of the American Bar Association ("A.B.A."). The Nevada Supreme Court Rules ("N.S.C.R.") limit admission to practice law in the State of Nevada to persons who have graduated from law schools accredited by the A.B.A. committee. N.S.C.R. 51(3).

The Nevada Supreme Court has inherent authority to license and regulate attorneys in the State of Nevada. It has delegated to the Board of Governors of the State Bar responsibility for determining qualifications of applicants for admission to practice. The Board of Governors is authorized

to delegate such responsibility to the Board of Bar Examiners. N.S.C.R. 39, 49.

Appellant applied for examination for a license to practice law in Nevada, and was denied pursuant to N.S.C.R. 51(3). Appellant then filed a Petition for Waiver which was denied by the Nevada Supreme Court.

A Notice of Appeal to this Court was filed in the Nevada Supreme Court on October 18, 1983. Appellee obtained an extension of time to respond on December 6, 1983. Appellee believes review in this matter is properly by Petition for a Writ of Certiorari. *District of Columbia Court of Appeals v. Feldman*, ___ U.S. ___, 75 L.Ed.2d 206 (1983). It has therefore captioned its response in alternative terms, in case this Court chooses to view an improvident Appeal as a Petition for such a Writ, 28 U.S.C. §2103.

The Board of Bar Examiners is without authority to license attorneys and is not a proper party in this matter. The Board of Bar Examiners accordingly, prays this Court to dismiss it from this case.

ARGUMENT.

The Nevada Supreme Court has inherent and exclusive authority to license and regulate attorneys in the State of Nevada. N.S.C.R. 39.

Under its authority, the court has promulgated rules for the admission of attorneys in Nevada, and has organized the State Bar of Nevada and the Board of Bar Examiners to administratively accept applications and make recommendations as to admission. The Nevada Supreme Court has, however, retained exclusive jurisdiction and control of the State Bar and the Board of Bar Examiners. N.S.C.R. 76.

As an arm of the Nevada Supreme Court, the Board of Bar Examiners is an administrative agency of the court rather than a "person," and is entitled to immunity from suit under the Eleventh Amendment to the United States Constitution. Thus, the Board of Examiners is not a proper party in this matter. *Clark v. Washington*, 366 F.2d 678 (9th Cir. 1966); *Louis v. Supreme Court of Nevada*, 490 F. Supp. 1174 (D. Nev. 1980). See also *County of Lincoln v. Luning*, 133 U.S. 529 (1890).

Even assuming, arguendo, that the Board of Bar Examiners could be a proper party in this matter, the Appellant has failed to present a substantial question to this Court. Appellant has effectively conceded that denial of his Petition for Waiver was not arbitrary. Appellant admits that he was referred to *In re Nort*, 96 Nev. 85, 605 P.2d 627 (1980) by the Nevada Supreme Court. In *Nort*, the court explained that Appellant's law school, Western State College of Law, was provided the opportunity to apply for accreditation but failed to do so. Since that time waivers have been denied to graduates of that school. The court has not modified *Nort*.

It is evident that only Western State College of Law graduates are affected by the question presented here. *Nort, supra*, provides ample warning that waivers will not be granted to that school's graduates. One attends at his own peril such an unaccredited school, knowing it is unacceptable in the state in which he will seek to practice. *Louis v. Supreme Court of Nevada*, 490 F. Supp. 1174 (D. Nev. 1980). Thus, the question presented by Appellant is insubstantial.

Conclusion.

The Board of Bar Examiners of the State Bar of Nevada is not a proper party and should be dismissed from this Appeal. In the event that this matter is treated as a Petition for a Writ of Certiorari, the Petition should be denied with respect to the Board of Bar Examiners of the State Bar of Nevada.

Respectfully submitted,

LIONEL SAWYER & COLLINS,

ROBERT M. BUCKALEW,

Attorney of Record for Appellee,

Nevada State Board of

Bar Examiners

RODNEY M. JEAN,

EVAN J. WALLACH.